

## **REMARKS**

Favorable reconsideration, reexamination, and allowance of the present patent application are respectfully requested in view of the foregoing amendments and the following remarks.

### **Personal Interview**

Applicant wishes to extend their appreciation to the Examiner for the courtesies extended to Applicant's representative during the personal interview conducted at the U.S. Patent Office on April 2, 2008. The subject matter of the personal interview is summarized in the following remarks.

### **Summary of Office Action**

In the April 9, 2007 Office Action claims 1-4, 6, 10-13, 18, and 19 were rejected under 35 U.S.C. §103(a) over U.S. Patent No. 5,813,855 to Crisio ("Crisio'855") in view of U.S. Patent No. 6,599,048 to Kuo ("Kuo'048"). Claims 1, 5, 6, 10, 14, 18, and 19 were rejected under 35 U.S.C. §103(a) over Crisio'855 in view of U.S. Patent No. 5,991,959 to Raven ("Raven'959"). Claims 7-9 and 15-17 were rejected under 35 U.S.C. §103(a) over Crisio'855 in view of Kuo'048 and further in view of Raven'959. Claim 6 was also objected to for a minor informality.

### **Summary of Response to Office Action**

By this Amendment, the Claims 1, 2, 3, 6, 10, 11, 12, 18, and 19 are amended. Accordingly, the claims currently pending in this application are Claims 1-19. Claims 1, 6 and 10 are the only independent claims.

**All Claims Define Allowable Subject Matter**

In the Office Action, beginning at page 2, paragraph 3, claims 1-4, 6, 10-13, 18, and 19 were rejected under 35 U.S.C. §103(a) over Crisio'855 in view of Kuo'048. This rejection is respectfully traversed and Applicant requests reconsideration for at least the following reasons.

As discussed during the personal interview, the head portion and the elastic portion are defined in greater detail in the present amendment in order to more clearly define the tip end light transmitting portion and to more clearly distinguish from the applied art of record. Specifically, in claim 1 the head portion is defined as including an opposed surface that is directly opposed to the brush surface of the head portion, and further including a side surface that is located between and spaces the opposed surface from the brush surface of the head portion. The elastic portion is further defined in claim 1 as being relatively more elastic than the head portion, and located at least at a part of the side surface of the head portion and defining an opening in the elastic portion at a location that intersects with the longitudinal axis of the shaft. the tip end light transmitting portion is defined by the portion of the head portion that does not include the elastic portion and then, as defined, the tip end light transmitting portion intersects with the longitudinal axis of the shaft.

In claim 10, the head portion is defined as including an opposed surface that is directly opposed to the brush surface of the head portion, and including a side surface that is located between and spaces the opposed surface from the brush surface of the head portion. The elastic portion is then defined as being relatively more elastic than the head portion, and including a side portion located along the side surface of the head portion and a central portion located at a substantially central portion of the opposed surface of the head portion and defining an opening in the elastic portion extending about the central portion of the elastic portion and between the central portion and the side portion of the elastic portion such that an opposed back surface light transmitting portion is provided while the central portion of the elastic portion also protects a user from contacting the opposed surface of the head portion.

By contrast the Crisio'855 patent discloses an illuminated toothbrush in which the handle portion 18 includes a "light ray transmitting shaft means" 30 that transmits light to bristle tufts 20. The object of the Crisio'855 patent is achieved by the specific configuration of the bristle tufts 20. Specifically, the bristle tufts 20 have a "roughened" surface at their midpoint, which allows light access into the bristle. The midpoint of each bristle is embedded in the head portion 16 of the toothbrush and opposite ends of each bristle tuft 20 extend from the head portion 16 to serve as the toothbrush bristles. Thus, light can enter into each bristle with more efficiency.

The Kuo'048 patent discloses a toothbrush that includes a rubber guard 5 that can be located on a bristle platform 7 of the toothbrush.

With regard to claims 1 and 10, both Crisio'855 and Kuo'048 fail to disclose, either alone or in alleged combination, the above noted features of claims 1 and 10 that further define the head portion and elastic body, respectively. With regard to claim 6, both Crisio'855 and Kuo'048 fail to disclose, either alone or in alleged combination the elastic body being formed from a transparent material.

Moreover, neither the Crisio'855 patent nor the Kuo'048 patent include a tip-end light transmitting portion defined by a combination of the head portion and the elastic portion, wherein the head portion is defined as including an opposed surface that is directly opposed to the brush surface of the head portion, and further including a side surface that is located between and spaces the opposed surface from the brush surface of the head portion. The elastic portion is further defined in claim 1 as being relatively more elastic than the head portion, and located at least at a part of the side surface of the head portion and defining an opening in the elastic portion at a location that intersects with the longitudinal axis of the shaft to define the tip-end light transmitting portion.

In claim 10, the head portion is defined as including an opposed surface that is directly opposed to the brush surface of the head portion, and including a side surface that is located between and spaces the opposed surface from the brush surface of the head portion. The elastic portion is then defined as being relatively more elastic than the head portion, and including a side

portion located along the side surface of the head portion and a central portion located at a substantially central portion of the opposed surface of the head portion and defining an opening in the elastic portion extending about the central portion of the elastic portion and between the central portion and the side portion of the elastic portion such that an opposed back surface light transmitting portion is provided while the central portion of the elastic portion also protects a user from contacting the opposed surface of the head portion.

With regard to claim 6, there is no disclosure or teaching of at least the feature of an elastic body being formed from a transparent material in the Crisio'855 and Kuo'048 patents, either when taken alone or when viewed in alleged combination. The Office Action indicates that the construction of the elastic member from transparent material would have been "an obvious design choice." Applicant respectfully disagrees with this assertion. The construction of the elastic member from transparent material provides unique light emitting characteristics for the toothbrush and is not merely a design choice. It is respectfully submitted that there is no teaching of a device that includes transparent elastic material at the head of a toothbrush. Accordingly, it is also respectfully submitted that the outstanding rejection is in error and withdrawal of the rejection is respectfully requested. Should such a rejection be maintained, Applicants respectfully request that some evidence be provided to support the Examiner's position regarding alleged design choice.

In the Office Action, the Examiner alleges that it would have been obvious to have placed the rubber guard as shown in the Kuo'048 patent over the head portion 16 of the Crisio'855 patent. The Examiner alleges that it would have been obvious to combine the Crisio'855 patent toothbrush with the Kuo'048 patent rubber guard 5 "in order to provide a barrier between the bristles and the gums during brushing." However, it is respectfully submitted that these references are deficient in their teachings, as noted above, and that there would not have been motivation to combine the references. There is no specific teaching in the Kuo'048 patent that would cause one of skill in the art to modify a particular illuminated toothbrush with the rubber

gum guard of Kuo'048, and the combination could ruin or at least interfere with the intended illumination purpose of the base reference.

Because neither the Crisio'855 patent nor the Kuo'048 patent, either alone or in combination, teach the above-referenced features, as well as other features, of Applicant's claims 1, 6 and 10, it is respectfully submitted that there is no *prime facie* case for obviousness.

The Office Action fails to meet the requirements for establishing a *prima facie* case of obviousness. Therefore, Applicant respectfully requests that the rejection of claims 1, 6, and 10 under 35 U.S.C. § 103(a) be withdrawn.

Further, since claims 2-4, 18 and 11-13, 19 depend from and respectively incorporate all the features of claims 1 and 10, respectively, claims 2-4, 18 and 11-13, 19 are also not obvious over the Crisio'855 patent in view of the Kuo'048 patent at least for the above reasons for which claims 1 and 10 are not obvious, and for the separate features that each of these claims recites. Thus, Applicant respectfully requests that the rejection of claims 1-4, 6 and 10-13, 18, and 19 under 35 U.S.C. § 103(a) be withdrawn.

Claims 1, 5, 6, 10, 14, 18 and 19 were rejected under 35 U.S.C. §103(a) over Crisio'855 in view of Raven'959. This rejection is respectfully traversed and Applicant requests reconsideration for at least the following reasons.

The Raven'959 patent discloses a toothbrush that has a head 1 that is entirely covered in resilient material.

It is respectfully submitted that Raven'959 is deficient for at least the same reasons as outlined above with regard to the base reference to Crisio'855. Specifically, with regard to claim 1, both Crisio'855 and Raven'959 fail to disclose, either alone or in combination, at least the feature of a tip-end light transmitting portion defined by a combination of the head portion and the elastic portion, wherein the head portion is defined as including an opposed surface that is directly opposed to the brush surface of the head portion, and further including a side surface that is located between and spaces the opposed surface from the brush surface of the head portion. The elastic portion is further defined in claim 1 as being relatively more elastic than the head

portion, and located at least at a part of the side surface of the head portion and defining an opening in the elastic portion at a location that intersects with the longitudinal axis of the shaft to define the tip-end light transmitting portion. Again, neither the Crisio'855 patent nor the Raven'959 patent are concerned with lighting the interior of an oral cavity, and therefore do not include or contemplate using the above-described features.

With regard to claim 10, both Crisio'855 and Raven'959 fail to disclose, either alone or in combination, at least the feature of a tip-end light transmitting portion defined by a combination of the head portion and the elastic portion, wherein the head portion includes an opposed surface that is directly opposed to the brush surface of the head portion, and including a side surface that is located between and spaces the opposed surface from the brush surface of the head portion. Nor do either of the references disclose or teach the elastic portion defined as being relatively more elastic than the head portion, and including a side portion located along the side surface of the head portion and a central portion located at a substantially central portion of the opposed surface of the head portion and defining an opening in the elastic portion extending about the central portion of the elastic portion and between the central portion and the side portion of the elastic portion such that an opposed back surface light transmitting portion is provided while the central portion of the elastic portion also protects a user from contacting the opposed surface of the head portion.

With regard to claim 6, there is again no disclosure or teaching of at least the feature of an elastic body being formed from a transparent material in the Crisio'855 or Raven'959 patents, either when taken alone or when viewed in alleged combination. Should such a rejection be maintained, Applicants respectfully request that some evidence be provided to support the Examiner's position regarding alleged design choice.

Because claims 5, 18 and 14, 19 depend from and respectively incorporate all the features of claims 1 and 10, respectively, claims 5, 18 and 14, 19 are also not obvious over the Crisio'855 patent in view of the Raven'959 patent at least for the above reasons for which claims 1 and 10 are not obvious, and for the separate features that each of these claims recites.

For the above reasons, Applicant respectfully requests that the rejection of claims 1, 5, 6, 10, 14, 18, and 19 under 35 U.S.C. § 103(a) be withdrawn.

Claims 7-9 and 15-17 were rejected under 35 U.S.C. §103(a) over Crisio'855 in view of Kuo'048 and further in view of Raven'959. This rejection is respectfully traversed and Applicant requests reconsideration for at least the following reasons.

As indicated above, the Raven'959 patent fails to provide the features missing from the base reference to Crisio'855. These same features are also missing from the secondary reference to Kuo'048. In particular, Crisio'855, Kuo'048, and Raven'959 fail to disclose, either alone or in any assorted combination, at least the feature of a tip-end light transmitting portion defined by a combination of the head portion and the elastic portion, wherein the head portion is defined as including an opposed surface that is directly opposed to the brush surface of the head portion, and further including a side surface that is located between and spaces the opposed surface from the brush surface of the head portion, as recited in claim 1. The references further fail to disclose or teach an elastic portion that is further defined in claim 1 as being relatively more elastic than the head portion, and located at least at a part of the side surface of the head portion and defining an opening in the elastic portion at a location that intersects with the longitudinal axis of the shaft to define the tip-end light transmitting portion.

With regard to claim 10, the applied reference fail to disclose or teach either alone or in combination the features of a light transmitting portion defined by a head portion that includes an opposed surface that is directly opposed to the brush surface of the head portion, and includes a side surface that is located between and spaces the opposed surface from the brush surface of the head portion. Also absent is the elastic portion that is defined as being relatively more elastic than the head portion, and including a side portion located along the side surface of the head portion and a central portion located at a substantially central portion of the opposed surface of the head portion and defining an opening in the elastic portion extending about the central portion of the elastic portion and between the central portion and the side portion of the elastic portion such that an opposed back surface light transmitting portion is provided while the central

portion of the elastic portion also protects a user from contacting the opposed surface of the head portion, as recited in claim 10.

Because claims 7-9 and 15-17 depend from and respectively incorporate all the features of claims 1 and 10, respectively, claims 7-9 and 15-17 are also not obvious over the Crisio'855 patent in view of the Kuo'048 patent and further in view of the Raven'959 patent, at least for the above reasons for which claims 1 and 10 are not obvious, and for the separate features that each of these claims recites. Thus, Applicant respectfully requests that the rejection of claims 7-9 and 15-17 under 35 U.S.C. § 103(a) be withdrawn.

### **Conclusion**

Applicant respectfully submits that the present patent application is in condition for allowance in its entirety. An early indication of the allowability of this patent application is therefore respectfully solicited.


If the Patent Examiner believes that a telephone conference with the undersigned would expedite passage of this patent application to issue, she is invited to call on the number below.

It is not believed that extensions of time are required, beyond those that may otherwise be provided for in accompanying documents. If, however, additional extensions of time are necessary to prevent abandonment of this application, then such extensions of time are hereby petitioned under 37 C.F.R. § 1.136(a), and the Commissioner is hereby authorized to charge fees



necessitated by this paper, and to credit all refunds and overpayments, to our Deposit Account listed on the application transmittal filed with this application.

Respectfully submitted,  
Cermak Kenealy & Vaidya LLP

By:  /djkl/  
David J. Kenealy  
Registration No. 40,411

**U.S.P.T.O. Customer Number 39083**

Cermak Kenealy & Vaidya LLP

515 E. Braddock Rd.

Alexandria, VA 22314

703.778.6610

Date: April 18, 2008